

REMARKS

Applicants have carefully considered the June 5, 2006 Office Action, and the amendments above together with the comments that follow are presented in a bona fide effort to address all issues raised in that Action and thereby place this case in condition for allowance. Claims 1-23 were pending in this application. Claims 13-14 were withdrawn from consideration pursuant to the provisions of 37 C.F.R. § 1.142(b). Claims 1-3 were allowed. Dependent claims 4-12 and 15-20 were objected to as being allowable if recast in independent form and rewritten to overcome the claim objections. Independent claims 21 and 22 were objected to as being allowable if rewritten to overcome the claim objections.

In response to the Office Action dated June 5, 2006, claims 13-14 have been canceled and claims 4-12 and 15-23 have been amended. The specification has been amended at page 37 to address a minor informality. Adequate descriptive support for the present Amendment should be apparent throughout the originally filed disclosure as, for example, the depicted embodiments and related discussion thereof in the written description of the specification, including page 32, lines 9-15. Applicants submit that the present Amendment does not generate any new matter issue. Entry of the present Amendment is respectfully solicited. It is believed that this response places this case in condition for allowance. Hence, prompt favorable reconsideration of this case is solicited.

Page 37 of the specification and claims 4-12 and 15-23 were objected to for minor informalities. Applicants have amended the specification and claims to address the informalities identified by the Examiner. Reconsideration and withdrawal of the objections are respectfully requested.

The dependencies of claims 15-20 have been further amended in view of the cancellation of claim 14.

Claim 23 was rejected under 35 U.S.C. § 102(b) as being anticipated over Hasegawa (U.S. Pat. No. 5,608,932, hereinafter "Hasegawa"). Applicants respectfully traverse.

The factual determination of lack of novelty under 35 U.S.C. § 102 requires the identical disclosure in a single reference of each element of a claimed invention, such that the identically claimed invention is placed into the possession of one having ordinary skill in the art. *Helifix Ltd. v. Blok-Lok, Ltd.*, 208 F.3d 1339, 54 USPQ2d 1299 (Fed. Cir. 2000); *Electro Medical Systems S.A. v. Cooper Life Sciences, Inc.*, 34 F.3d 1048, 32 USPQ2d 1017 (Fed. Cir. 1994). Moreover, in imposing the rejection under 35 U.S.C. § 102, the Examiner is required to specifically identify wherein an applied reference is perceived to identically disclose each feature of a claimed invention. *In re Rijckaert*, 9 F.3d 1531, 28 USPQ2d 1955 (Fed. Cir. 1993); *Lindemann Maschinenfabrik GMBH v. American Hoist & Derrick Co.*, 730 F.2d 1452, 221 USPQ 481 (Fed. Cir. 1984). That burden has not been discharged. Moreover, there are significant differences between the claimed invention and the method disclosed by Hasegawa that would preclude the factual determination that Hasegawa identically describes the claimed invention within the meaning of 35 U.S.C. § 102.

In general, the most stable posture for a person using a nursing-care bed is a flexion position with knees bent and hips flexed. For this reason the caregiver, when moving the care recipient from a supine to a lateral position, preferably adjusts the person's posture to be suitably placed in a flexion position. While conventional turning beds support a postural change from a supine to a lateral position or a postural change of tilting the mattress toward one side or the

other, they do not, however, go as far as to perform both of these postural changes simultaneously.

In the adjustable bed of amended claim 23, on the other hand, the tilt mechanism and the side-member lift mechanism are driven independently of each other. Accordingly, the care recipient is able to achieve postural changes to a flexion position and from a supine to a lateral position using the turning bed, so that positional changes from a supine to a lateral position and vice versa are performed exceptionally by operations that are just like those carried out by the guiding hand of a caregiver. Also, by bringing the operational angles of the tilt mechanism and the side-member lift mechanism in agreement with each other at the time of postural changes, the postural changes can be performed with high stability.

Since the claimed subject matter of amended claim 23 enables the care recipient to achieve postural changes while in a flexion position, which exerts the least burden on the care recipient's body, it is possible for the care recipient to look forward to an easing of the physical discomfort and psychological anxiety experienced to date. The care recipient is thus able to comfortably face postural changes, and the occurrence of decubitus ulcers can be effectively suppressed.

On the other hand, Hasegawa basically relates to a bed apparatus in which the height of the bed plate structure can be decreased to enable the care patient to easily change his position. This bed apparatus includes the rotation drive means 35 for rotating the rotation frame 32 in the right/left direction (FIGS. 2, 3, and 5). The rotation drive means 35 corresponds to the tilt mechanism of the present invention.

In the bed apparatus of Hasegawa, the third and fourth bed plates 64c and 64d of the side bed plate assemblies 64 are connected by hinges. Accordingly, in the driving operation of the

rotation drive means 35, the bed plates 64c and 64d are raised with these hinges serving as the inner angles, in conjunction with the tilt of the side bed plate assemblies 64 (corresponding to the operation of the side-member lift mechanism of amended claim 23).

Thus, in the adjustable bed of Hasegawa, the side-member lift mechanism and the tilt mechanism do **not** operate separately but operate **simultaneously with each other**, as already acknowledged by the Examiner. In the invention of amended Claim 23, on the other hand, the side-member lift mechanism and the tilt mechanism can be driven **independently of each other**.

The above argued differences between the claimed method of the Hasegawa disclosure undermines the factual determination that Hasegawa discloses the sequence for adjusting an adjustable bed identically corresponding to that claimed. *Minnesota Mining & Manufacturing Co. v. Johnson & Johnson Orthopaedics Inc.*, 976 F.2d 1559, 24 USPQ2d 1321 (Fed. Cir. 1992); *Kloster Speedsteel AB v. Crucible Inc.*, 793 F.2d 1565, 230 U.S.P.Q. 86 (Fed. Cir. 1986). Applicants, therefore, submit that the imposed rejection of claim 23 under 35 U.S.C. § 102 for lack of novelty as evidenced by Hasegawa is not factually viable and, hence, solicit withdrawal thereof.

Applicants note the Examiner's Statement of Reasons for Allowance included on pages 3 through 4 of the Office action. Entry of that Statement into the record should not be construed as any agreement with or acquiescence by Applicants in the reasoning stated by the Examiner. *Salazar v. Procter & Gamble Co.*, 414 F.3d 1342 (Fed. Cir. 2005). The Statement of Reasons for Allowance should not be used to interpret the cited claims, particularly to the extent if any that the Statement of Reasons for Allowance may differ from the express language of the claims and/or Applicants' positions on patentability of those claims. It is respectfully submitted that the allowed claims should be entitled the broadest reasonable interpretation and broadest range of

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equivalents that are appropriate in light of the language of the claims, the supporting disclosure and Applicants' prosecution of the claims, without reference to the Statement of Reasons for Allowance.

It is believed that all pending claims are now in condition for allowance. Applicants therefore respectfully request an early and favorable reconsideration and allowance of this application. If there are any outstanding issues which might be resolved by an interview or an Examiner's amendment, the Examiner is invited to call Applicants' representative at the telephone number shown below.

To the extent necessary, a petition for an extension of time under 37 C.F.R. 1.136 is hereby made. Please charge any shortage in fees due in connection with the filing of this paper, including extension of time fees, to Deposit Account 500417 and please credit any excess fees to such deposit account.

Respectfully submitted,

McDERMOTT WILL & EMERY LLP



Brian K. Seidleck  
Registration No. 51,321

600 13<sup>th</sup> Street, N.W.  
Washington, DC 20005-3096  
Phone: 202.756.8000 BKS:ldw  
Facsimile: 202.756.8087  
**Date: August 30, 2006**

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as our correspondence address.**